IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11705 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH PURRSHOTTAMBHAI JANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11705 of 2001

MR PK JANI for Petitioner No. 1

MR ND GOHIL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 04/11/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed for setting aside the communication dated 30th April 2001 by which the petitioner was communicated that his case for

being appointed as Beat-Guard was considered, however, it is not possible to give relaxation to the requirements under the circular dated 21.9.99 and that therefore, he cannot be appointed to the said post. The petitioner has also prayed for a direction for being appointed to the post of Beat-guard.

2. The petitioner has stated that he was appointed as a daily-wager in the nursery of the Forest and Environment Department on 6th December 1984 and he continued on the same position for number of years and presently also he is discharging the duties in the said capacity. The petitioner has, therefore, claimed benefit of being regularized on the post of Beat-guard pursuant to the resolutions issued by the State Government and in particular the resolution dated 6th November, 1992.

3. Since the respondents did not accede to the request of the petitioner for being appointed to the said post on regular basis, the petitioner approached this Court earlier by filing Special Civil Application No.2556/94. The said petition came to be disposed of by an order dated 28th April 2000, wherein this Court was pleased to allow the petition by directing the Secretary, Forest and Environment Department to consider the case of the petitioner for appointment to the post of Beat-guard in accordance with the rules after taking into consideration the qualifications of the petitioner and also after taking into consideration his 15 years of service with the Department. It was further provided that the same shall be considered appropriately for granting him necessary age relaxation in the facts of the case.

4. It is the case of the petitioner that despite the said order dated 28th April 2000, the respondents did not grant him regular appointment and instead by the order dated 30th April 2001, informed the petitioner that it is not possible to give relaxation in the circular dated 21.9.99 and therefore, he cannot be appointed to the post of Beat-guard. As noted above, it is this communication dated 30th April 2001 which is impugned in the present petition.

5. In response to the notice, the respondents have appeared and filed affidavits in reply. It is primarily contended that the petitioner did not fulfill the age requirement as laid down in the Government resolution dated 21.9.99 and even after applying the relaxed standard by relaxing the age restrictions by five years, the petitioner still crossed the upper age limit and that

therefore it was not possible to consider his case for regularization.

6. Learned advocate Shri Unwala appearing for the petitioner has contended that the High Court on earlier occasion allowed the petition of the petitioner and that therefore, the respondents were bound to give an appointment order to the petitioner and that there was no further inquiry necessary or possible. He, therefore, contends that the impugned communication is illegal and unlawful. With respect to the question of upper age limit, the counsel for the petitioner is unable to point out that the petitioner comes within the age limit of maximum of 25 years and that he fulfills the relaxed age limit of 30 years after permitting relaxation of 5 years. He however, submits that out of 342 daily wagers regularized pursuant to the Government Resolution dated 21.9.99, as many as 6 or 7 daily-wagers also had not fulfilled the upper age limit requirement. He submits that in that view of the matter, the Government should be deemed to have taken a policy decision to further relax the age limit.

7. Having considered the contentions raised on behalf of the parties, it is clear that on the earlier occasion, this Court directed the respondents to consider the case of the petitioner in accordance with the rules. I am unable to read any warrant in the said order to mean that the petitioner should be automatically regularized even if he does not fulfill the requirements laid down under the circular. The petitioner is claiming benefit under the GR dated 21.9.99 and seeks regularization pursuant to the said circular. Unless the petitioner is fulfilling the requirements of the said circular, his case cannot be accepted. The respondents have in the affidavit in reply clearly pointed out that in consultation with GAD, the upper age limit was decided to be relaxed by a further period of 5 years and even then the petitioner was not coming within the age limit. On that count, the decision of the respondents not to give the benefit of GR dated 21.9.99 to the petitioner cannot be faulted.

8. The petitioner has not placed on record the names or details of the persons whom he claims were given benefits of GR dated 21.9.99 despite being over-aged. While rejecting the present petition, liberty is given to the petitioner to approach the Government with the details of such persons and if the Government has taken a conscious policy decision to further relax the age limit which the petitioner is fulfilling, it will be open for

the respondents to consider the case of the petitioner pursuant to such a decision.

9. Subject to the above observations, the petition is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)